

No. 2948

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

JOHN FAIR NEW, alias J. F.
NEW, alias J. F. NEW, JR., alias
DR. NEWO NEWI NEW,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR

Upon Appeal from the Southern Division of the United States
District Court for the Northern District of California,
First Division.

JOHN W. PRESTON,
United States Attorney.

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Asst. United States Attorney,
Attorneys for Defendant in Error.

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F. D. Monckton,
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STATEMENT OF THE CASE.

As stated by counsel in his opening brief, this case comes before this Court on a writ of error granted September 29, 1916. The plaintiff in error, John Fair New, alias J. F. New, alias J. F. New, Jr., alias Dr. Newo Newi New, and one Marie T. Leo, alias Marie Tully, alias Marie Graham, were charged with having devised a scheme and artifice to defraud various persons by and through the Post Office establishment of the United States.

The indictment consists of seven counts; the same scheme, however, is charged in each count and the only difference that exists in the counts set forth in the indictment is that seven different letters were sent through the mail. Upon the trial of the case, the Government failed to call the parties to whom the letters were sent in counts one, five, six and seven, and the Court instructed the jury to return a verdict of not guilty on these counts, and the jury by their verdict found the plaintiff in error guilty on counts two, three and four, covering the letters which the Government established were sent through the mail. No effort was made on the part of the Government to have the seven counts included, inasmuch as the parties to whom the letters were sent resided at such a distance that the Government felt it impracticable to call the witnesses.

Marie T. Graham, having been acquitted by the jury, we are now only concerned with the plaintiff in error, John Fair New, in these proceedings.

The scheme to defraud, briefly speaking, is as follows:

That said plaintiff in error, John Fair New, claimed to be a human-being who had attained a supernatural state of self-immortality in body by a course of righteous conduct, consisting of an abstinence from the use of meats as food, abstinence from the use of intoxicating liquors of any kind, abstinence from the use of indecent or profane lan-

guage of any kind, abstinence from telling falsehoods and bearing false witness against his neighbors, and abstinence from the sin of committing adultery, etc.

That because of the supernatural powers which the plaintiff in error, John Fair New, possessed, he was enabled to conquer disease, death, poverty and misery, and that this power could be transmitted to those who were willing to accept his teachings and pay therefor the sums demanded.

That the foregoing pretensions were untrue and were known by the plaintiff in error to be untrue, and that plaintiff in error did not practice the dictates advocated by him.

That in order to obtain money and other things of value, the plaintiff in error, John Fair New, would pretend that he was the author of a large number of books, to wit: one hundred, treating on supernatural powers, when in truth and in fact he was the author of only one book which consisted of a compilation of platitudes and garbled extracts from other work.

That the plaintiff in error would organize in various cities of the United States companies, associations and corporations of various kinds with the ostensible object of publishing said books, but that the real object of the said plaintiff in error in organizing said corporations was merely for the purpose of selling stock in said corporations and receiving money and converting it to his own use.

ARGUMENT.

Counsel for plaintiff in error, in his opening brief, sets forth various specifications of errors, beginning on page 8 of said brief, and then endeavors to cover said assignments in the argument which follows. Counsel, on page 25 of his brief, and for the first point presented therein, states that the motion to quash the indictment should have been granted because the indictment is a direct attempt to prohibit the plaintiff in error from a free exercise of his religious beliefs and is also an attack upon the teachings of the religious establishments to which the plaintiff in error belongs.

In reply to this contention, the Government desires to place itself on record now, that there was nothing in the proceedings in this case that justifies counsel for plaintiff in error in making the assertion that this is an attack upon the religious beliefs of plaintiff in error. The plaintiff in error is charged with having used the mails for the purpose of defrauding innocent people. The indictment sets forth very clearly the fact that the plaintiff in error was not sincere in the religion or in the doctrines which he pretended to preach and this is the gist of the whole case.

It is a well established principle that anyone who is not sincere in the doctrines which he preaches may be prosecuted for using the mails to defraud when the mails are so used for the purpose of carrying out any scheme formulated by him.

In the case of *United States vs. White*, 150 Fed. 379, the Court there instructed as follows:

“If you find that, at the time when he made the alleged pretensions and mailed the letter, he knew that he could not and would not enable the persons, who paid him money in order to acquire such occult and supernatural powers, to acquire them, you will have little difficulty in finding that his purpose in making such false pretense was the fraudulent one of defrauding each of such persons.”

It was again stated in the case of *Post vs. United States*, 135 Fed. 1, as follows:

“If she practiced in good faith without the intention to defraud, she is not guilty, although in fact the theory and practice followed were worthless; but if, without belief in her practice and with knowledge that her representations regarding it were false, she made them to defraud, the fact that mental healing is a lawful vocation does not prevent conviction.”

The doctrine set forth in the above cases is the well established principle which governs a case similar to the one now under consideration. If John Fair New was sincere in promulgating his doctrines, then there would be merit in the contention of his counsel, but on the other hand, if the Government established the fact to the satisfaction of the jury that the said John Fair New was not sincere in the doctrines which he advocated, and furthermore, was carrying on his work for the purpose of de-

frauding innocent people, then in this event, the principle of the two cases set forth should apply. It is with the object in view of establishing the fact that the plaintiff in error, John Fair New, was conducting his work for fraudulent purposes that the Government will now briefly review some of the evidence introduced in the case.

The plaintiff in error first began his operations in Boston or New York City and we find him selling and trying to sell a book entitled the "New Life Theology, the New Life Science". This book is marked exhibit "11" and a review of the testimony (p. 126 trans.) in the case will show that this book was published by the father of plaintiff in error, although said plaintiff in error, in an effort to deceive the public, removed one of the pages in the front part of it and inserted his picture therein. It is the contention of the Government that this alone is sufficient evidence to show a fraudulent design on the part of the plaintiff in error.

Then we find the plaintiff in error organizing a corporation in the State of New York for the purpose of publishing some forty-nine or fifty books which he claimed to be the author of.

The evidence introduced in the case by the Government's witnesses, C. A. Leach (pp. 147 trans.), Mrs. Ida B. Stetson (pp. 162, etc., trans.), and Florence K. White (pp. 131, 132 trans.), shows conclusively that the plaintiff in error secured sev-

eral hundred dollars from each of these persons and that no results were ever obtained by said plaintiff in error in the organization of the New York corporation known as the New Life Publishing Company.

The evidence further shows that the plaintiff in error, for the purpose of inducing Mrs. Florence K. White to invest her money in said corporation, promised to start her out in church work on a salary of \$35.00 per week (p. 132 trans.) but absolutely failed to do this. He also told Mrs. White, as a further inducement to get her to invest in said corporation, that Mrs. Ida B. Stetson had invested \$1500 in said corporation and that Mr. C. A. Leach had also invested the same amount. The testimony of Mr. Leach, Mrs. White and Mrs. Stetson also shows that the plaintiff in error had secured from a Mrs. Johnson, about seventy years of age, a manuscript for a work called "The New Dawn" and that it was only after considerable opposition on the part of Mr. Leach (p. 148 trans.) that the plaintiff in error did not make use of said manuscript and claimed it as his own work.

The evidence introduced on behalf of the Government and covered by the testimony of Mr. Leach, Mrs. Stetson and Mrs. White also shows that as soon as plaintiff in error had secured from them all of the money that he could get them to pay into the corporation, he requested them to resign, stating that he had other parties who would finance the

corporation; that because of his insistence, these parties did resign and soon thereafter plaintiff in error left the City of New York and came to Seattle and then to Los Angeles (p. 126 trans.) and there organized corporations for the purpose of publishing the same books that the New Life Publishing Company of New York was organized for. After operating for some period in Los Angeles, and after securing considerable money there (pp. 213, 215 trans.) the plaintiff in error came to San Francisco and again undertook to organize four corporations, one of which was for the same purpose that the New York corporation and the Los Angeles corporation was organized for, namely: to publish the books which plaintiff in error claimed to be the author of. It will also be noted from the literature of plaintiff in error introduced in this case, that one reading such literature would be induced into believing that the said books had already been published (pp. 57 and 71 Ex. 7), when in truth and in fact, said book had not been published by the said plaintiff in error, except perhaps one or two.

In San Francisco plaintiff in error organized four corporations, with the following names: The Newthot Publishers, The Newthot University, The Newthot Church and the New Order (Ex. 10) and again proceeded to sell stock the same as he had done in Los Angeles and New York.

One of the greatest frauds perpetrated by plain-

tiff in error was with one rather elderly lady known as Julia Etta Marston. She was called from the East by the Government. Her testimony shows that before she left the East she sent a telegram to plaintiff in error requesting him to meet her at the train. She was met at the train by plaintiff in error and they both stopped at the same hotel. She states in her direct examination as follows:

“I bought \$10,000 worth of stock in the corporation and paid it in cash but I borrowed \$5500 dollars of Dr. New to pay the \$10,000.
 * * * I put \$4500 in cash in the corporation and then I borrowed \$5500 from Dr. New.
 * * * I invested in the Newthot Book Publishing Company. * * * After I came to San Francisco I paid for the incorporation papers; I think it was \$100. I paid that out of my own personal funds. I paid the \$100 and the incidental expenses. * * * I transferred two lots of mine to Dr. New—deeded them.”

And in this connection, in order to show the character or type of women with whom plaintiff in error was dealing, and for the further purpose of showing this Court that the plaintiff in error had much power over his victims, the Government wishes to call attention to a portion of Mrs. Marston's testimony with reference to taking lectures from plaintiff in error. The testimony is as follows:

“I paid him \$10 when I sent the application and when I completed I got my diploma and

gave him \$100. When he came to give me personal lessons; the lessons consisted of asking me bible questions and I would answer them and I also had to lecture before him. When I was lecturing he simply sat and listened. Once when I was lecturing, I remember that he went to sleep. He said, 'Sister, does it matter if I close my eyes, I can hear you.' And I said 'No'. After a while he was shaking his shoulders and laughing after I got through, and I said 'What is the matter?' and he says, 'Well, it's too good to keep. I slept fifteen minutes and waked up and you were going on just the same.' As to my being prepared to take up the advanced work he said that I was the best qualified and one of the best bible students he had ever met. After that he did not prescribe any work for me."

It can readily be seen from the above tetsimony that the action on the part of plaintiff in error was merely for the purpose of entrapping his victims and the statements made by her, and her attitude, indicate conclusively that she readily yielded to his solicitations and was willing to invest her money in a worthless concern.

So we find the plaintiff in error organizing a corporation in New York, Seattle, Los Angeles, and in San Francisco for the purpose of publishing the same books which said plaintiff in error claims to be the author of, and in this connection the Government desires to state that a review of the testimony will show that said plaintiff in error would

abandon the corporations organized by him shortly after the first sales of stock were made.

It was in San Francisco that the plaintiff in error evidently desired to perfect his fraudulent scheme on a larger basis than was ever attempted by him before, as he organized four different corporations here during the Fair time and, although the said plaintiff in error is now before this Court with his appeal on forma pauperis proceedings, paragraph 6 of the Articles of Incorporation in the Newthot Publishers would indicate that he was investing in money or property the sum of \$990,000. Said paragraph reads as follows:

“The names of those who have subscribed money or property to assist in founding the Newthot University, together with the amount of money and description of property subscribed, as follows, namely, to wit:

Dr. Newi Newo New, Publisher New-
thot Church.....\$990,000

Dr. M. L. Claire, Pastor Newthot
Church 10,000.”

As a matter of fact, plaintiff in error invested no money in this corporation and the Court can readily see what fraud might be perpetrated upon the people if \$990,000 worth of stock were issued to him so that he may then be in a position to sell his stock as he had done theretofore in the other corporations.

In this connection the Government desires to call attention to a letter written by the plaintiff in error to Dr. Claire, who was operating with plaintiff in error at the time that said letter was written:

“Hollenbeck Hotel,

Los Angeles, Cal., Friday, P. M.

Dear Dr. Claire:

Your welcome letter recd. Am very glad to hear from you. Now sister if any one calls, man or woman, to ask about the book Company, Church or the University, be sure and always have and tell a *prosperous financial* business story as I have referred some parties there or rather gave them the street and number and said their friends (who live there) could call there at our offices and see the progress for themselves. I am writing to Marie the same. I gave her name as V.Pres. and yours as Sec. and local Pastor, so be ready both of you at all times to tell the *fine condition* of the business generally. This is *very* important so talk it over with Marie and be ready. Always easy and never embarrassed in the least and always most prosperous.

(over)

Also we are to have the New Auditorium for the Newthot World Congress etc. I will tell Marie to see you and talk it over so as to be ready. Read her this letter and remember your offices, etc. May God bless you both and help and keep you. Bye and Bye. N.

Also many students all over the world, etc. etc. etc. etc. It is the Newthot Co.'s doing business

now there. See. Large sales of books, etc. etc. etc.”

This letter alone conclusively shows the disposition on the part of the plaintiff in error to misrepresent the conditions of his organizations for the purpose of selling stock.

It is also interesting to note that although plaintiff in error pretended that the eating of meat was against the principles which he advocated, yet whenever the opportunity properly presented itself, he never refused to eat meat himself. Both Florence K. White and C. A. Leach (pp. 128 and 134, trans.) testified that plaintiff in error ate meat whenever he was fortunate enough to have it set before him on the table. Florence K. White, when asked whether or not plaintiff in error ate meat, testified as follows:

“Every time Dr. New was at the table with me he ate meat. We had meat every day twice a day. As to eating meat he said ‘We preach that we do not eat meat to the outside world but we can have what we like at our own private table.’”

This is another instance where plaintiff in error tried to deceive the outside world and goes to show conclusively that he was insincere in the doctrines which he advocated.

It is also a well established fact, as drawn out by the testimony by plaintiff in error and defend-

ant, Marie Tully Graham, that they were occupying apartments together. It is true that they claimed that defendant Graham slept on a couch in the kitchen but the testimony of Walter F. Crowley, G. Bohn, J. W. Jessen and C. A. Conlan would indicate otherwise. For instance, Mr. Crowley stated as follows:

“I was out at the apartment of Dr. New the morning that he was arrested about half past six o’clock in the morning on October first of last year. Mr. Jessen, Mr. Bohn and Mr. Conlan, Deputy United States Marshals, were there. I saw an entrance effected in the apartment. Mr. Bohn knocked on the door and he knocked several times. A lady’s voice answered and he asked if Dr. New was in there and the woman replied ‘no’. Then he said ‘You will have to let me in.’ She said, ‘You can’t come in here’. Mr. Bohn said, ‘You had better open the door because we are coming through anyway.’ So, in the course of a few minutes the lady opened the door. I saw Dr. New in there. He was in bed in the front room known as a wall bed. He had some of his street clothes on. He was in his underwear. The bed was directly in front of the door. It was mussed up. I cannot say as to whether it was occupied by more than one person. Mrs. Graham had on a kimona. I saw some ladies’ apparel in Dr. New’s room; some of it was on that window seat and part of it on the chair in front of the bed. I don’t know that I could describe the wearing apparel. The best way to describe them would be to say a lady’s

lingerie; that is, stockings, corsets and the rest. I was there in the capacity of a newspaper reporter. I was detailed by the City Editor to go there. There was false hair lying on the dresser. There is what is known as a switch lying on the dresser.”

The testimony of Mr. Jessen and Mr. Bohn was to the same effect.

The next point to which the Government desires to direct attention and which will show still more conclusively the fraud perpetrated by plaintiff in error, is with reference to his age, as testified to by Grace de Wolf, a witness called on behalf of the Government, who interviewed plaintiff in error in the capacity of a newspaper reporter, as follows:

“I interviewed Dr. New in the Civic Auditorium during the year 1915. Dr. Claire was present. Dr. Claire introduced me to Dr. New. Dr. New told me he was 80 years of age—either 80 or 82. He told me he was never going to die. He said he dressed in white because black was an indication of death. He said he could grow hair over night. When I asked him why he was bald himself, he said he was bald because he preferred it. He told me it was possible for him to become thin over night but that he was fat because he preferred to be. He said if he should go to Los Angeles he would get thin because the climate down there was warmer and he would not need so much flesh but then should he return to San Francisco he would immediately get fat again.”

Florence K. White testified that the plaintiff in error claimed to be "79 years young" to her and that he tried to get Mrs. Johnson, who was associated with The New Life Publication Company, the corporation organized in New York, to say that she was 150 years of age. Her testimony in this respect is as follows:

"He told Mrs. Johnson that she should say that she was 150. She was so well preserved. Her hair was very white; she had a very clear complexion. She was a woman about, I should judge, 70."

The reason for this, of course, can plainly be observed, inasmuch as plaintiff in error claimed to believe in the immortality of the body and in order to deceive those with whom he came in contact, it was his desire to have people believe that he was much older than he was and tried to get Mrs. Johnson to make a false representation concerning her age.

It is true that the indictment accuses plaintiff in error of not publishing the books which he pretended to be the author of. An examination of the literature sent through the mails would naturally lead one to believe that said plaintiff in error is the author of one hundred books. In fact, on page 4 of the only book in the Government's opinion that has been published by defendant known as "The Newthot Science", and marked "Exhibit 3" will be found the names of one hundred books. The

truth of the matter is that the Newthot Science is the only publication, to which the Government's attention has been called, published by plaintiff in error, and this, as set forth in the indictment, consists of a compilation of platitudes and garbled extracts from other works. In order to further deceive the people into believing that he had published more than one book, the Government calls attention to exhibits 1, 2 and 3. Exhibit 1, entitled "The Newthot Guide" is identical with exhibit 2, entitled "Newology" and "Newology" and "The Newthot Guide" consisting of exhibits 1, and 2, and composed of one hundred and forty-eight pages are copied word for word in the first one hundred and forty-eight pages of "The Newthot Science", so here again, it can readily and clearly be seen that plaintiff in error is trying to deceive the public into believing that he is the author of three books, when in fact he is the author of but one, and in this connection the Government desires to again call attention to page 7 of exhibit 3 "The Newthot Science", which reads as follows:

"ORIGINAL THINKER. — Twenty thousand years ago, possibly longer, during the Golden Age, before the Fall of man, when all men lived by the Newological Law of Correspondence and held direct communion with God, the Newologist sat in the solitude of the mountain, desert, forest and plain, in the profoundest abstraction, endeavoring to think out the Newological problem of human existence.

Aristotle, Berkeley, Comte, Hegel, Kant, Plato, Socrates and others, adown the centuries have been seeking a solution to the problem of immortality in the body. Akin to the ancient seers, isolating himself from the world, seeking silence and solitude, surcease from busy humanity, Newology has its studious sage, its wanderer thru the field of thot, its searcher for an endless life. And so our Great Newologist, quietly seated in mental abstraction so profound that for years he was unconscious of all physical environment, even oblivious to heat and cold, rain and storm, noise and confusion, sleep and exercise, hunger and thirst, until at last in the most glorious moment of his life, he discovered Newology by which he is now to redeem humanity from all the ills of the past."

It can be seen from this page again that the plaintiff in error is maliciously, and evidently for the purpose of carrying out the idea of deceiving the readers of this book into believing that he is immortal in body, misrepresenting a fact. He states that "quietly seated in mental abstraction so profound that for years he was unconscious of all physical environment, even oblivious to heat and cold, rain and storm, noise and confusion, sleep and exercise, hunger and thirst, until at last in the most glorious moment of his life, he discovered Newology by which he is now to redeem humanity from all the ills of the past." Can it be said that the plaintiff in error did not know that he was mis-

representing the facts in making a statement of this kind? Does this Court believe that he was unconscious of his surroundings for years, oblivious to heat and cold, rain and storm, noise and confusion, sleep and exercise, hunger and thirst? And yet in the face of this and the other facts to which your Honors' attention have been called, counsel in the closing paragraph of his brief states:

“It can therefore be readily seen that there is no evidence in the record establishing the alleged scheme to defraud”.

On page 10 of said exhibit 3, entitled “The Newthot Science”, the following paragraph appears:

“BLONDE HERCULES.—The author belongs to a class by himself. Physically he is a blonde Hercules, with square, massive shoulders, huge arms and legs, smooth-shaven face, almost boyish in general aspect. His eyes are a keen gray, overtopped with blonde silken eyebrows. His attire is usually a complete suit of white broadcloth, including frock coat and well-creased trousers. He greets you with a smile. He is opposed to everything that savors of death. He would revise every dictionary and cast from their pages every word symbolical of the ending of life. The words ancient, old, dead, dying, fading, sorrow and pain should never be spoken, and to the mouths of Newologists such utterances are tabooed. Talk of prolonging life. Think of living forever. Believe that you will exist perpetually. Get ready to live forever.”

Counsel attempts to make a point with reference to a failure on the part of the Government to properly identify the letters through the mail. It is a well recognized fact that if plaintiff in error devised a scheme and artifice to defraud, and for the purpose of carrying out said scheme, mailed a letter, it matters not how harmless the contents of the letter wrote, the crime of misusing the mails is completed.

U. S. vs. Young, 232 U. S. 155-161.

U. S. vs. Kenofsky, No. 649, April 9, 1917,
Supreme Ct. Dec.

An examination of the testimony of Henry Doolittle and Mrs. Stacy Spear, covering the second, third and fourth counts of said indictment will show that there is no merit in the contention of counsel. Their testimony reads as follows:

“HENRY H. DOOLITTLE, a witness called on behalf of the Government, having been duly sworn testified as follows:

MR. PRESTON—Q. I show you here what purports to be a letter addressed to Mr. Henry H. Doolittle, 511 South Olive Street, Los Angeles, Calif., dated July 8, 1915, signed ‘Faithfully thine in truth, love and peace N. N. New, Bishop, the New Thot Temple Inc. Palace of Education, P. P. I. E. San Francisco, Cal.’ and ask you if you received that letter?

A. Yes sir.

Q. Where did you get it?

A. It came through the mails from San Francisco.

Q. Was it enclosed in an envelope?

A. Yes.

Q. Postmarked?

A. Yes.

Q. It is postmarked San Francisco. Did you receive it soon after or on the date it bears date here?

A. Yes.

Q. What has become of the envelope?

A. I destroy generally the envelopes.

Q. Did you destroy this envelope?

A. Yes.

Q. And this paper was taken by you out of the post office at Los Angeles?

A. The letter you mean?

Q. Was it delivered by the post office?

A. Yes.

Q. At Los Angeles?

A. Yes.

Q. You are positive about its having been mailed at San Francisco?

A. Yes.

MR. PRESTON: We offer it in evidence.

MR. HONEY: We would like to cross-examine the witness—ask him just a few questions as to the letter.

Q. Has this letter been in your possession ever since you received it?

A. No.

Q. It is dated July 8th, 1915: can you tell us about when you received it?

A. A few days I think after it was mailed?

Q. Within the next two or three days?

A. Yes.

Q. Now then, how long did it remain in your possession?

A. Until last year when it was asked to be sent here.

Q. Somebody asked you to send it here?

A. Yes.

Q. Then you forwarded it to San Francisco, did you?

A. Yes.

Q. You don't know as a matter of fact that this is the same identical letter you received through the mail, do you?

A. It seems to me that it is.

Q. You received one something like this?

A. I think that is the original letter that I sent on here.

Q. The point I make is you don't know as a matter of fact that this is the identical letter, do you?

A. I have no reason to doubt it is.

THE COURT: You mean by that that it has not been in his possession ever since?

MR. HONEY: The point I am asking is that there might have been 50 letters exactly like this; the witness can only say he received a letter similar to that.

THE COURT: He can say he received a letter, which he thinks is that letter, and he sent it to the postoffice department.

MR. HONEY: But you don't know as a matter of fact that this is the same letter that you took out of the postoffice in Los Angeles?

A. You mean, that I would recognize some particular mark on it?

Q. Yes.

A. I did not particularly mark the letter, but I sent them on, as I asked them to be sent, I had no reason to think that they changed the letter or anything of that kind.

Q. We do not either, Mr. Doolittle, but the point is, you don't absolutely know that that is the same letter that you took out of the post office at Los Angeles?

A. I don't know of any reason why it is not the real letter.

MR. PRESTON: We think it is sufficiently identified and we offer it.

MR. HONEY: We will save an exception. No. 1. (The letter is marked "U. S. Exhibit 22")

MR. PRESTON: Q. I show you here another signed letter 'N. N. New, President', addressed to the same person, 'Mr. Henry H. Doolittle, 511 South Olive Street, Los Angeles, Calif.' under date of July 22, 1915, and ask you whether or not that is a letter that you received through the mails?

A. Yes, that is another letter which I received through the mail.

Q. Was it likewise postmarked as the other one, 'San Francisco, Calif.'?

A. Yes sir.

Q. What has become of the envelope?

A. The envelope probably was destroyed as was the other.

THE COURT: I understand his testimony concerning this letter will be the same, on cross-examination as it was in regard to the other, and that you object to the introduction as nothing identified, the objection is overruled and an exception noted. Exception No. 2.

MR. HONEY: Yes, it is understood that our objection goes to that. (The letter is marked 'U. S. Exhibit 23').

MR. PRESTON: I show you a letter signed 'J. F. New, Secretary' and ask you whether or not you received that letter or a similar one through the mail?

A. Yes, this is another of the letters that came along.

Q. Did you get that through the mail the same as you did the others?

A. Yes.

MR. HONEY: Those two letters which you have already read are the letters which are mentioned in the indictment?

MR. PRESTON: Yes.

MR. HONEY: We object to this one on the ground that it has not been shown that the defendant sent that letter, or either of them. We submit that it purports to come from J. F. New, Jr.

THE COURT: The objection will be overruled.

MR. HONEY: Exception—No. 2½. (The document is marked 'U. S. Exhibit 24')."

Mrs. A. B. STACY SPEAR, a witness called on behalf of the government, having been duly sworn, testified as follows:

"MR. PRESTON: Q. Mrs. Spear, you reside in Los Angeles?

A. I did at the time that I received that letter. I am residing at Watts.

Q. That is near Los Angeles, is it?

A. It is between Los Angeles and Long Beach.

Q. I show you here a paper purporting to be a letter addressed to you and ask you whether or not you ever saw that before?

A. Yes, sir, I received it when I was at that address.

Q. How did you receive it?

A. Through the mail.

Q. State whether or not it was post marked on the envelope?

A. Postmarked San Francisco.

Q. Was it in an envelope?

A. Yes sir.

Q. Stamped?

A. Yes sir.

Q. What did the envelope bear?

A. I could not say now. It was so long ago, you see.

Q. How did it compare with this date at or about the date mentioned in this letter or near the date?

A. Yes sir, but I could not say for sure about the date, you see, because I did not observe.

Q. You are positive however that it was in a stamped envelope and post marked San Francisco and addressed to you at this address?

A. Yes sir.

Q. And you received it through the mail?

A. Yes sir.

MR. PRESTON: We offer it in evidence, if the Court please."

Counsel representing plaintiff in error objected to the introduction of said letter in evidence, which objection was overruled by the Court.

It should be noted that plaintiff in error although he took the stand in his own behalf, never denied sending or causing to be sent the matters referred to herein, through the mail.

In answer to counsel's second point set forth in his brief, namely: that the indictment consisted entirely of general allegations and conclusions of law which were so uncertain, ambiguous and unintelligible that it was impossible to prepare a defense, the Government calls attention to the indictment which will show clearly and conclusively that the scheme set forth in the first count is not ambiguous or uncertain or in any way confusing and that this scheme is incorporated into each of the other six counts.

There is an allegation on page 32 of counsel's brief to the effect that the indictment does not allege that plaintiff in error claimed to have had any supernatural powers but it is clearly alleged in the indictment "that said defendants would *pretend* that defendant John Fair, alias J. F. New, alias J. F. New, Jr., alias Dr. Newo Newi New *was a human-being who had attained the supernatural state of self-immortality* in the body by a righteous conduct consisting of * * * etc." It can readily be seen from this allegation that it is positively urged in said indictment that plaintiff in

error did claim to possess a supernatural state, and the word "power" is used synonymously with the word "state" elsewhere in the indictment.

The fourth point raised by counsel in his brief, namely: that the Court erred in denying defendant's motion to dismiss the indictment interposed on the ground that he had not been given a speedy trial within the meaning of the sixth Amendment to the Constitution of the United States, can be answered by a reference to the proceedings which took place in this case preceding the trial, and in this connection the Government desires to set forth the counter-affidavit interposed by Mr. M. A. Thomas, as follows:

"M. A. THOMAS, being first duly sworn, deposes and says that he is and at all times mentioned herein was an Assistant United States Attorney for the Northern District of California, and that he has since about the 5th day of March 1916 had charge of the prosecution of the above entitled cause; that said cause was set down to be tried on the 14th day of February, 1916, and was by consent of all parties, continued from February 14, 1916, to March 20, 1916; that on the 15th day of March 1916 the United States moved for a continuance of the said cause for trial for the term, which said motion was presented on March 15, 1916, on affidavits and was granted by the Court on March 20, 1916, on which date the District Court ordered the case continued to April 3, 1916, to be reset; that about ten days prior to

the 14th day of March 1916, affiant told John C. Catlin, who was then attorney for the defendants, that it would be impossible for the Government to proceed with the case on trial on March 20, 1916 or at any time near thereto, on account of the fact that United States Attorney, John W. Preston, who had had sole charge of the case prior to that time, was ill, that no one else in the office of the United States Attorney had sufficient knowledge of the case, or could gain sufficient knowledge of the case on account of the fact that the case was quite complicated and on account of the fact that the other assistants in the office were occupied with other cases of equal importance, which could not be postponed; that said John C. Catlin told affiant that he would consult with his clients and see whether or not they would consent to a continuance and that he did not notify affiant of their refusal to consent until about the 14th day of March, 1916; that the case was continued to be set to April 12, 1916, on which date it was, on motion of the United States Attorney, continued to the July term to be set; that on April 12, 1916, the calendar of the District Court was full and the Court announced in continuing the said cause to the July term to be set; that there was no date during the present term upon which the Court could set the case down for trial on account of the fact that other cases which had previously been set had the right of way.

Affiant further states that on March 25, 1916, John C. Catlin, Esq., who was then attorney for the defendants herein, advised affiant that

he intended to make an application to the Circuit Court of Appeals for a Writ of Habeas Corpus on behalf of the defendants herein and that he did, on said date, make an application for the said writ; that he, on said date, advised affiant that the Circuit Court of Appeals did not grant a Writ of Habeas Corpus and that the said John C. Catlin desired to know if the Government would consent to a reduction of the bonds of the said defendants, and that the said John C. Catlin stated to affiant that if a reduction of bonds could be had, the defendants would be able to secure certain moneys for their subsistence and that he would abandon his application for a Writ of Habeas Corpus. Affiant thereupon consented to and moved the Court for a reduction of bond of the two defendants and their bonds were reduced on said day to \$500 on the part of defendant Fair, and \$100 on behalf of defendant Graham; affiant further states that the condition of the calendar in the said District Court would not on April 26, 1916 and will not now permit the setting of this case for trial at any time during the present term."

As a matter of fact, the Government was always anxious and desirous of an early trial in this case. An examination of the pleadings on file will show that plaintiff in error, by interposing numerous dilatory pleas, was instrumental in prolonging the trial during the first few months after the indictment was returned. Then came the illness of Mr. Preston who had been in full charge of the case and who was the only attorney who was familiar

with the Government's case and in a position to handle said case for the Government. As soon as the seriousness of Mr. Preston's illness was discovered an effort was made on the part of the United States Attorney's office to familiarize itself with the proceedings and proceed to trial and Mr. Preston upon his return from his sick bed gave precedence to the trial of this case.

In reply to the fifth point raised by counsel on page 41 of his brief, the Government desires to call attention to the fact that each and every of the exhibits referred to herein were either letters or advertising matter used by plaintiff in error in the conduct of his fraudulent scheme and under the circumstance of this case the Government was clearly entitled to introduce the same.

31 Cyc. 1024.

Bars vs. U. S., 20 App. Cas. 232

U. S. vs. Reid, 42 Fed. 134

U. S. vs. Stickle, 15 Fed. 798.

On page 51 of counsel's brief, the statement is made by him that it is a fact that plaintiff in error is the author of one hundred books. In reply to this contention the Government calls attention to the exhibits on file herein which will show that plaintiff in error is now pretending that a few sheets of paper, in some cases not more than five or six, with printed matter upon them, consist of a

separate book. An examination of the literature (pp. 57 and 71 Ex. 3 and 7) of the plaintiff in error will show that reference to these books was deceptive and that any reader of said literature would naturally conclude that they were books which had been printed and of the ordinary size, and not merely scraps of paper.

An examination of the exhibits will further show that the University to which plaintiff in error refers throughout his literature was not in reality a university but was a correspondence course which had no permanent address but which traveled from place to place with plaintiff in error.

In exhibit, entitled "The Newthot Science", page 178, the plaintiff in error says that "Man, through the knowledge and wisdom of Newology may be omnipotent", and in speaking of himself, says:

"MEMORY—I am omnipotent, omniscient and omnipresent and remember all here and now",

but in his direct examination, on page 207, he says:

"It is my religion to forget rather than to remember. It is more important to forget than to remember."

In the cross-examination of plaintiff in error, beginning on page 229, the Court can readily see the disposition on the part of plaintiff in error to

carry out his fraudulent scheme in endeavoring to conceal from the Court any information that might lead to learning his correct age, or any other fact concerning his family relations. His testimony is as follows:

“MR. PRESTON: Well, Doctor, what was your mother’s maiden name?

A. My mother’s maiden name. I will give you the full name. Her name was—Margaret Thot Fair.

Q. Margaret Thot?

A. Thot—Margaret Thot Fair. My grandmother’s name.

Q. I haven’t asked you that at all. I just asked you your mother’s maiden name.—Margaret Thot Fair?

A. Yes. Her spiritual name was N. N. Fair.

Q. We were not asking you about spiritual names just yet. When was your mother born, if you know, sir.

A. I don’t know.

Q. When did she tell you she was born?

A. I don’t know.

Q. Did she ever tell you?

A. I don’t remember.

Q. What?

A. I don’t remember.

Q. Have you now in your possession any of her handwriting?

MR. REISNER: We object to it on the ground that it is immaterial.

THE COURT: Objection overruled.

MR. PRESTON: I want to know who she was.

MR. HONEY: Do you doubt he had a mother?

MR. PRESTON: Q. Have you any of her handwriting?

A. No, but I think I can tell you how to get it.

Q. Well, I don't want to know that now; I just asked you if you had any, have you anything that would prove to us independent of your own statement what her maiden name was?

A. If you will produce the Bible that Mrs. Claire your friend told me that she turned over to you in that I will show you my mother's handwriting.

Q. Well, now, of course you know that is untrue.

A. And there is lots of her writing there.

Q. Just wait a minute. Answer the question.

A. The last of her writings, sir, are in that book, and if I had not been arrested by your scheming I would have had it today.

Q. Well, now, that is immaterial, Doctor.

A. That is true.

Q. But I would like you to tell us whether you have any independent proof of your mother's maiden name?

A. If I had that Bible I would give it to you and if I had not been arrested by your scheming I would have had it.

MR. PRESTON: I would like to have the Court tell this witness I am not on trial here.

THE WITNESS: I know, but I am entitled to my day in court and I believe the judge will give it to me.

MR. REISNER: Doctor, let us refrain from that.

MR. PRESTON: Answer my question, Doctor.

A. I have answered it.

Q. What is in this Bible that you say I have got about your mother? Could you give us some idea about it?

A. Well, I know her writing was in it. I know some of her writing was in it.

Q. Is her birthday in it?

A. Yes, sir.

Q. Don't you know when it was?

A. No, sir, I don't.

Q. Don't you know anything about it at all?

A. I think I remember of reading my father and mother's birthday, but I don't remember it, and the time of her marriage and also the time of my birth and the record in regard to my birth, but the date of the birth of my father and my mother nor my grandparents I cannot remember.

Q. Have you any idea about it?

A. Not at this time, no.

Q. You cannot tell us whether they lived to be 50, 75 or 100 or 1000 years old?

A. I don't know just how old they were.

Q. How old was your father when he died?

A. I don't know.

Q. Do you remember him?

A. Sir?

Q. Do you remember him?

A. Oh, yes; I remember my father.

Q. Do you remember your sister?

A. I remember of seeing her once.

Q. Do you remember any playmates that you had when you were a boy?

A. As I happened, which I am sorry to say—

Q. (Interrupting) Answer my question.

A. I had very few playmates.

Q. Do you remember any playmates?

A. Not at this time.

Q. Where did you attend school?

A. I was educated by a governess and private tutor.

Q. Where?

A. In various cities of the world.

Q. Well, where was the first one?

A. The first one—I was born in New York City. My parents arrived from London, England, or Manchester, England, it was—a quaker city—we stayed at what is called then “Castle Garden” and now called—the name is changed anyway. It was Castle Garden then and we arrived at ten o’clock and I was born at noon.

Q. That is, either Manchester or London?

A. Manchester.

Q. From Manchester, England?

A. From England some place; I think it was Manchester.

Q. Where was this place?

A. Where was it?

Q. Yes, the street number.

A. I was born in a hotel.

Q. What was the name of the hotel?

A. In New York.

Q. What was the name of the hotel?

A. I don’t remember.

Q. Have you ever seen it since?

A. I think I saw it quite a number of years after, as I remember, before it was destroyed.

Q. What year did your parents emigrate to the United States?

MR. REISNER: We object to the question on the ground it is immaterial. There is no issue in this case involving the age of this defendant. It does not make any difference. Suppose he represented here that he was 82 years old. What issue would that be in this case?

THE COURT: Overruled.

MR. PRESTON: Read the question, Mr. Reporter?

(The reporter reads the last question)

A. My parents were American citizens. They did not have to emigrate.

Q. Well, what year was it they made this voyage?

A. I don't know.

Q. Have you any idea?

A. No sir, I do not. If I had remembered all such things as that, sir, I could not have been the head of a great movement.

Q. Do you know whether it was before the Napoleonic wars, or afterwards.

A. When was the Napoleonic wars?

Q. Well, you know when the battle of Waterloo occurred, don't you?

A. When was the Battle of Waterloo?

Q. You don't know?

Q. Don't you know?

A. I am asking you. No, sir, I don't know at this time.

Q. I am not on the witness stand.

A. No, sir, I don't.

Q. Was it before?

A. I don't know those dates very well.

Q. Was it before the Battle of New Orleans or not?

A. Battle of what?

Q. Of January 1st, 1815?

A. I know about it.

Q. I am asking you if your parents came over here at the time you were born before that or after that?

A. I have had no association in regard to that.

Q. Are you familiar with the history of the United States and do you know it to any extent at all?

A. I studied the history of the United States at one time.

Q. Do you remember—

A. When I was a boy.

Q. Do you remember when—do you remember any president by name?

A. Sir?

Q. Do you remember any president by name?

A. I do.

Q. Well, who was President of the United States when you first can remember?

A. I don't remember that.

Q. Did you ever cast a vote? You know what that means, don't you?

A. I understand.

MR. REISNER: We object to that on the ground it is incompetent, irrelevant and immaterial.

THE COURT: Objection overruled.

A. I think that I have voted on some certain occasions.

MR. PRESTON: Q. Well, did you ever vote for electors for the Presidency of the United States?

A. Thus far principally I have been devoting my time to the idea of teaching other things but citizenship, statesmanship, politics and so forth, but since this time I shall change my tactics and vote at every election. I see the necessity of it.

MR. PRESTON: I move that answer be stricken out and the witness be instructed by the Court to answer.

THE COURT: The question is, did you ever vote for the Presidential Elector, Doctor?

Q. Do you remember of any election at which you voted?

A. I remember a good number of elections but I don't know which ones they were. Being an American, I have watched those things closely in order to be able to write on politics, statesmanship, citizenship and the like.

Q. Do you remember the Civil War?

A. I know of the Civil War.

Q. Do you remember it?

A. I know something about it.

Q. Where were you when Fort Sumter was fired on?

A. Now I want to ask your Honor, in the first place I want to say this—that my religion—

Q. My religion means relation to life. It is my religion and now if I must be harangued in regard to a few years, more or less, and my religion assailed in this way I would like to know it now.

THE COURT: You will find out when you answer these questions.

THE WITNESS: Sir.

THE COURT: You will find out when you answer these questions. Answer these questions, if you can.

A. The most of them I cannot answer because, as I say, my religion is absolutely not to

count time by days and years and if I had counted time by days and years I would not have been here before a jury of my peers.

THE COURT: Now, that may be quite true, Doctor, but the present question is, where were you when Fort Sumter was fired on?

A. I don't know.

THE COURT: Well, if you had said that in the beginning we would have saved time.

MR. PRESTON: Q. Do you remember John Brown's raid?

A. I either knew of it or read of it.

Q. Were you in existence at that time?

A. It might be so.

Q. Well, don't you know whether you were in the flesh at that time or not?

A. It perhaps is so.

Q. Well, don't you know whether it is so or not?

A. I might say that there was a possibility of it.

Q. Do you remember the Lincoln-Douglas debate?

A. I know something about it.

Q. Were you at the debate?

A. Either in person or by hearing one another. I don't know just how I got my information.

Q. Don't you know whether you were living or dead at the time?

A. We have always lived, for that matter, before the world was."

In conclusion the Government is of the opinion that the evidence to which the Court's attention has been called shows beyond any question a fraudulent scheme on the part of plaintiff in error. In fact, the jury so found, and the evidence presented to them is sufficient to support their finding.

The Court will recall that a corporation was first organized in New York and stock was sold to Mrs. Ida B. Stetson, Mrs. Florence K. White, Mr. C. A. Leach and Mrs. Johnson, for which several hundred dollars were obtained. This corporation was organized for the purpose of publishing the same books that a corporation was subsequently organized in Seattle, Washington. The Seattle corporation was abandoned the same as the New York corporation. Later, a corporation was organized in Los Angeles for the same purpose that the New York and Seattle corporations were organized and after several hundred dollars were secured there by the plaintiff in error, the Los Angeles corporation was abandoned and the San Francisco corporation was organized. The feature of the San Francisco corporation which was organized for the purpose of publishing the books and to which attention has been called, showing in a most conclusive manner the fraudulent scheme on the part of the plaintiff in

error, is the fact that the plaintiff in error claims to have invested \$990,000 worth of stock and \$10,000 more was subscribed by M. L. Claire. There was no more stock issued in this corporation, consequently in order to obtain money, it would have been necessary for plaintiff in error to have transferred his own personal stock. This is the scheme which he evidently pursued throughout; instead of issuing treasury stock in the corporation he would issue his own personal stock, pocket the money and thus leave the corporation in a condition where it was impossible for it to publish the books, and defeat the purpose for which the corporation was supposed to be organized. So, we have a complete failure of four different corporations organized by plaintiff in error for the purpose of publishing the same books. The organization of these corporations; the sending of the letter to Dr. Claire; the pretension on his part that he was much older than he really was, for the purpose of leading people to believe that there was some merit in his contention of the immortality of the body; the further fact that plaintiff in error placed his picture in the book which was published by his father or some other person, and endeavored to lead the people to believe that it was his own publication; was cavorting around the country with another man's wife; set forth matters in his book to which this Court's attention has already been directed which are false upon their face; and for the various other reasons already referred to, and which more fully appear in

the exhibits on file herein, causes the Government to feel that there was no error committed and that the verdict of the Jury and the judgment of the Court should not be disturbed.

Respectfully submitted,

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